

TIP REPORTING ALTERNATIVE COMMITMENT

(For use only in the food and beverage industry)

between

Department of the Treasury—Internal Revenue Service

and

_____ [Name of Employer]

This Tip Reporting Alternative Commitment (TRAC) agreement is part of the Tip Rate Determination/Education Program that the Internal Revenue Service implemented in 1993 to promote tip reporting compliance by employees in accordance with the Internal Revenue Code of 1986.

Section 6053(a) of the Code requires employees to furnish one or more written statements to their employers reporting all tips received in each calendar month. The statements must be furnished to the employer by the 10th day of the following month.

I. DEFINITIONS

A. Service Representative means the Internal Revenue Service employee or delegate authorized to execute or terminate this TRAC agreement on behalf of the Internal Revenue Service.

B. Employer means _____ [insert name, address, and EIN].

C. Establishment means each of the establishments or divisions listed by name, address, and identifying number in Attachment A. [sample attached]

1. One place of business. If the Employer has one place of business, that place of business is an Establishment, and no attachment is necessary.

2. Additional establishment. If the Employer subsequently wishes to include an additional establishment in this TRAC agreement, the Employer must notify the Service Representative in writing. The notification must include the name, address, and identifying number of the additional establishment.

D. Employee means a person employed by the Establishment who directly or indirectly receives tips of at least \$20.00 per month during the course of the employee's employment.

II. COMMITMENT OF EMPLOYER

A. Education.

1. New Employees. The Employer will establish an educational program that trains newly hired Employees that the law requires them to report all their cash and charged tips to their employer. At a minimum, the program will give each Employee—

a. A short oral explanation of the reporting requirements and the records maintenance requirements. The material in IRS Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, is suitable for this purpose;

b. Written informational materials, which may include any of the following IRS documents: Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, Publication 531, *Reporting Tip Income*, and Publication 1872, *Tips on Tips* for employees in the food and beverage industry; and

c. An explanation of the Employer's tip reporting procedures (section II.B below).

2. Existing Employees. The Employer will establish a quarterly education program for existing Employees.

B. Employee tip-reporting procedures. Each Establishment will establish a procedure or procedures under which a written or electronic statement is prepared and processed on a regular basis (no less frequently than monthly), reflecting all tips for services attributable to each Employee. These procedures are to enable Employees to meet their reporting requirements under section 6053(a) of the Code. An Employer may provide different procedures for cash and charged tips, as well as for directly tipped and indirectly tipped Employees. IRS Publication 1875, *Tips on Tips* for employers in the food and beverage industry, includes an example of an acceptable TRAC statement that an employer can use for both directly and indirectly tipped Employees.

C. Returns, taxes, and records.

1. Filing returns and paying and depositing taxes.

a. In general. The Employer (or employing Establishment) will comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes.

b. Form 8027. For each Establishment that is a "large food or beverage establishment," the Employer will comply with the requirements for filing Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*, and send an additional copy of each Form 8027 to the IRS.

2. Maintaining records. Each Establishment will maintain records of the following:

a. Gross receipts subject to tipping, and

- b. Charge receipts showing charged tips.

The Employer will retain these records for at least 4 years after the April 15 following the calendar year to which the records relate.

3. Making records available. Upon the request of the Service Representative, the Employer will make the following quarterly totals available, by Establishment, for statistical samplings of its Establishments:

- a. Gross receipts subject to tipping,
- b. Charge receipts showing charged tips,
- c. Total charged tips, and
- d. Total tips reported.

III. COMMITMENT OF INTERNAL REVENUE SERVICE

A. Tip examinations. The IRS will not initiate any tip examinations of the Employer (or Establishment) for any period for which this TRAC agreement is in effect, except in relation to a tip examination of one or more Employees or former Employees of the Employer (or Establishment).

B. Section 3121(q) notice and demand. Any section 3121(q) notice and demand issued to the Employer (or Establishment) relating to any period during which this TRAC agreement is in effect will be based solely on amounts reflected on—

1. Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, filed by an Employee with his or her Form 1040, or
2. Form 885-T, *Adjustment of Social Security Tax on Tip Income Not Reported to Employer*, prepared at the conclusion of an employee tip examination.

C. Compliance review. The IRS may evaluate the Employer for compliance with the provisions of this TRAC agreement.

D. Assistance. Upon request, the IRS will assist any Employer or Establishment in establishing, maintaining, or improving its educational program or tip reporting procedures.

IV. TERMINATION OF AGREEMENT

A. Termination by Employer. If the Employer no longer wishes this TRAC agreement to apply to one or more Establishments, the Employer may terminate this TRAC agreement with respect to the Establishment(s) by providing written notification to the Service Representative identifying the Establishments(s). If the termination applies to all the Establishments of the Employer, the TRAC agreement will be terminated.

B. Termination by Internal Revenue Service.

1. Termination of TRAC agreement. The IRS may terminate this TRAC agreement only if—

- a. The Service Representative determines that the Employer (or any Establishment) has failed to substantially comply with section II.A (pertaining to Education for Employees) or II.B (pertaining to Employee tip reporting procedures);
- b. The Employer (or any Establishment) fails to meet any of the requirements of section II.C (pertaining to filing returns and paying and depositing taxes, maintaining records, and making records available); or
- c. The IRS pursues an administrative or judicial action relating to the Employer, Establishment, or any other related party to this TRAC agreement.

2. Termination of TRAC agreement with respect to one or more Establishments. In the case of a failure described in section IV.B.1.a or b, by one or more Establishments, the Service Representative may choose to terminate this TRAC agreement with respect to the Establishment(s) instead of terminating the TRAC agreement under section IV.B.1.

C. Effective date of termination. Except for a termination described in section IV.B.1.a, any termination will be effective the first day of the first calendar quarter after the terminating party notifies the other party in writing. In the case of a termination under section IV.B.1.a, the Service Representative may elect an earlier termination date, but no earlier than the first day of the first calendar quarter of the substantial noncompliance. The terminated agreement will continue to apply to periods during which the agreement was effective.

D. Renewal after termination. The Employer and the Service Representative may at any time enter into a new TRAC agreement.

V. EFFECTIVE DATE OF AGREEMENT

A. General rule. This TRAC agreement is effective on the first day of the first calendar quarter following the date the Service Representative signs the TRAC agreement.

B. Additional establishment. This TRAC agreement is effective with respect to an additional establishment on the first day of the quarter in which notification of the additional establishment is made.

VI. MISCELLANEOUS

A. Examinations and/or inspections of books and records. For purposes of this TRAC agreement—

1. Compliance review. A compliance review is not treated as an examination or an inspection of books of account or records.

2. Examination. The inspection of books of account or records pursuant to a tip examination is not an inspection of books or records for purposes of section 7605(b) of the Code, and is not a prior audit for purposes of section 530 of the Revenue Act of 1978.

B. Notices. The parties will send all correspondence pertaining to this TRAC agreement, including a notice of termination, to the addresses stated below, unless notified in writing of a change of address. In the event of a change of address, the parties must send all correspondence to the new address. All notices are deemed to be sent or submitted on the date of the postmark stamped on the envelope or, in the case of a notice sent by certified mail, the sender's receipt.

C. Authority. The Employer represents that it has the authority to enter into this TRAC agreement on behalf of itself and the Establishment(s) listed in Attachment A.

D. Termination of prior agreement. Any prior TRAC agreement relating to an Establishment covered by this Agreement shall terminate on the day preceding the effective date of this Agreement with respect to the Establishment. The terminated agreement will continue to apply to periods during which the agreement was effective.

E. General termination and sunset provision. The Commissioner of Internal Revenue may terminate all TRAC agreements at any time following a significant statutory change in the FICA taxation of tips. After December 31, 2005, the Commissioner may terminate prospectively the Tip Rate Determination/Education Program and all TRAC agreements.

VII. PAPERWORK REDUCTION ACT

The collections of information contained in this document have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1549.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collections of information in this document are in sections I.C, II.A, II.B, II.C.2 and 3, and IV.A. This information is required to comply with sections 6053(a) and 6001 of the Internal Revenue Code and to assist the Internal Revenue Service in its compliance efforts. This information will be used to monitor the Employer's performance under the TRAC agreement. The collections of information are required to obtain the benefits available under the TRAC agreement. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 296,916 hours.

The estimated annual burden per respondent/recordkeeper varies from 5 hours to 24 hours, depending on individual circumstances, with an estimated average of 7 hours. The estimated number of respondents and/or recordkeepers is 41,800.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

VIII. SIGNATURES

By signing this TRAC agreement, the parties certify that they have read and agreed to the terms of this document, including Attachment A, Establishments.

EMPLOYER:

INTERNAL REVENUE SERVICE:

(Name of Employer)

(Signature)

BY: _____

TITLE: _____

ADDRESS: _____

(Headquarters street address)

(City, state, ZIP code)

DATE: _____

(Signature)

BY: _____
(Service Representative's Name)

TITLE: _____

ADDRESS: _____

(Street address)

(City, state, ZIP code)

DATE: _____

ATTACHMENT A

ESTABLISHMENTS

[format for individual establishments]

Employer

A & B Company
xx-xxxxxx
Street address
City, state, zip code

[format for chains]

Employer (parent, if applicable)

XYZ Corp.
yy-yyyyyy
Street address
City, state, zip code

Establishments (if applicable)

AB Restaurant
Street address
City, state, zip code

CD Restaurant
Street address
City, state, zip code

Related entity (if applicable)

UVW Corp.
zz-zzzzzz
Street address
City, state, zip code

Establishments (if applicable)

EF Restaurant
Street address
City, state, zip code